

Waiver of Requirements of 24 CFR 203.37a (b)(2)

Pursuant to §7(q) of the Department of Housing and Urban Development Act (42 USC 3535(q) and 24 CFR 5.110, I hereby waive §203.37a(b)(2) of the regulations. That regulation prohibits a mortgage from being insured by FHA if the sale of the property that will be the security for the mortgage is within 90 days of acquisition by the seller. This waiver is limited to a sale within the 90-day period if the property is acquired through foreclosure, and is effective for a period of one year. In support of the waiver, I make the following Findings and Determinations.

FINDINGS

1. Section 203.37a(b)(2) of the FHA regulations provides that the mortgage for a property will not be insured by FHA if the contract of sale is executed within 90 days of the acquisition of the property by the seller. One of several exceptions to this 90-day prohibition is contained in 203.37a(c)(6), which allows mortgage insurance for properties sold by state- and federally-chartered financial institutions and government-sponsored enterprises (e.g., Fannie Mae and Freddie Mac). The properties sold by these entities are usually obtained by foreclosure.
2. Since the promulgation of §203.37a in 2003, FHA has learned that 1) there is considerable difficulty in determining which mortgagees and/or servicing lenders that have sold properties acquired through foreclosure are state- or federally-chartered, and 2) many of the mortgagees covered by the existing exemption transfer titles to such properties to subsidiaries or vendors for the purpose of selling the properties, and those subsidiaries and vendors are not currently covered by the exemption.
3. Since the promulgation of §203.37a, the volume of foreclosures has increased dramatically, especially in the past year. In examining its policy regarding the 90 day prohibition contained in §203.37a, FHA finds that a temporary relaxation of its eligible property requirements also can help address the mortgage crisis.
4. FHA finds that in addressing specific cases related to the mortgage crisis, waiving the regulations so that properties acquired by foreclosure by mortgagees that are not state- or federally-chartered would allow the properties to become eligible for FHA-insured financing during the 90-day period. This would reduce holding costs to mortgage lenders. An expansion of the exemption will result in a lessening of the likelihood of property value deterioration to adjoining and near-by properties as well as to the properties acquired by foreclosure.
5. FHA can have a very significant role in helping the housing market stabilize, providing liquidity in the mortgage market, and increasing mortgage credit, both nationally and in those states suffering the most from the sub-prime mortgage meltdown.

6. The current exemptions from the 90-day restriction in §203.37a(c) are insufficient to accommodate sales of properties acquired as the result of foreclosure by mortgage lenders other than those currently exempted, and do not accommodate exempt institutions that use subsidiaries and vendors to sell their inventory of foreclosed properties.
7. Section 203.37a creates an unwarranted disparity between mortgagees that are state- or federally-chartered and mortgagees that are not so chartered. Section 203.37a also inhibits FHA's ability to provide access to safe and affordable mortgages for purchasers of these properties during the 90-day period.

DETERMINATIONS

1. Additional exemptions to the 90-day sale period must be granted for sales of real estate owned by mortgagees to reduce deterioration in properties acquired through foreclosure that may otherwise remain vacant for up to 90 days because of FHA's existing policy. This waiver also adds to the existing exemptions those properties foreclosed on by mortgagees, their subsidiaries, as well as vendors hired by exempt entities to sell their real estate owned.
2. The most expeditious means of effectuating such additional exemptions is by waiving §203.37a(b)(2). A waiver of §203.37a(b)(2) will not violate any statutory requirements.
3. The above-findings constitute good cause for the waiver, as required by 24 CFR 5.110.
4. The waiver shall expire one year from today's date.

WAIVER

Section 203.37a(b)(2) of the FHA regulations, 24 CFR 203.37a(b)(2), is hereby waived for a period of one year from today's date with regard to sales of properties acquired by mortgagees, whether sold directly by the mortgagees or by their subsidiaries or by vendors to whom they have transferred titles to properties for the purpose of effectuating sales of those properties.



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